

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3245 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BD NIKAM

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR RR VAKIL for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/07/1999

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The petitioner prays for the quashing and setting of the order dated 27/3/1998 Annexure-F and the order dated 20/8/97 Annexure-D of the respondent No.1 & 2 respectively. Under these orders, the petitioner was held to be not eligible for the post of Medical Officer,

Class-III (Ayurved) on the ground of age eligibility.

#. It is not in dispute that in the school leaving certificate the birth date of the petitioner is 1/6/1944. He was appointed purely on ad-hoc basis as a Medical Officer, Class-III (Ayurved) under the order dated 8/3/1982 of the respondent No.1. This appointment was subject to his selection for the post by Gujarat Panchayat Seva Pasandagi Mandal. It is the case of the petitioner that his correct birth date is 1/6/1948. If this date is taken to be correct then he is not lacking age eligibility. The learned counsel for the petitioner admits that in case his date of birth is taken as 1/6/1944 he is lacking age eligibility. The earlier two special civil applications before this court being special civil application No.2309/85 and special civil application No.6533/97 were filed by the petitioner. Both these special civil applications were came to be decided by this court on 13/1/1998. The first special civil application was filed by the petitioner challenging therein the action of the respondent No.1 not to call him for selection for the post on the ground that he is age barred. This petition was admitted and interim relief against the termination of the service of the petitioner was granted and he continued in service till 20/8/1997. This petition was came to be dismissed for non-prosecution on 18/7/1997 and interim relief was also vacated. Subsequently, this petition was restored on the application of the petitioner. After vacation of interim relief services of the petitioner were terminated and that was challenged in special civil application No.6533/97. In that petition the interim relief has not been granted. This court during the course of the hearing of the special civil application No.2309/85 gave directions to the Gujarat Panchayat Services Selection Board to decide what is the correct date of birth of the petitioner and whether the petitioner is eligible for the post as per his date of birth accepted by the Board. The special civil application No.6533/97 was dismissed in view of the directions aforesaid in the petition No.2309/85. In pursuance to these directions, the Board has decided that 1/6/1944 is the correct date of birth of the petitioner.

#. The learned counsel for the petitioner produced on the record of this special civil application the birth date certificate of the petitioner. The petitioner claims 1/6/1948 as his date of birth on the basis of the affidavit of his father. The xerox copy of the birth certificate from the register of Birth and Death is there on the record, which was issued to the petitioner on

5/6/1998. The entry of the birth date of the petitioner has been made in that register on 5/6/1998. It is a document which the petitioner got in his favour on the basis of the affidavit of his father. It is not the case of the petitioner that his birth date recorded in the school leaving certificate has been changed. Merely on the basis of the affidavit of his father in case the date of birth as given out in the school leaving certificates is changed it will be open flood gate for corruption as well as manipulations in the date of birth of employees/officers. On the document which the petitioner has got himself on the basis of his father's affidavit it is difficult to rely upon it for the claim of the petitioner what to say to accept the same. It is not the case that by mistake of some other person in the school record the date of birth of the petitioner was wrongly recorded. What is stated that while getting his son admitted at school by mistake his date of birth has been mentioned as 1/6/1944. It is though very easy for the petitioner to state but difficult to believe. On the declaration which is a declaration made by the father for the benefit of his son, the date of birth of the petitioner as recorded in the school leaving certificate cannot be taken to be incorrect. The father should have taken appropriate action for the correction of the date of birth of the petitioner in school record at the relevant time, which is precisely is not done. Only on the basis of such document, which can conveniently be prepared the date of birth of the petitioner as recorded in the school leaving certificate cannot be held to be wrong.

#. To show what is the date of birth of the petitioner, there are two set of evidence produced by him. The date of birth 1/6/1944 is there in his own document and the authorities concerned, has taken it to be correct. The first date of birth is given when the petitioner has been admitted in the school and at that point of time there is no other consideration in the mind of the father so that was the time where the correct declaration of the birth date of the petitioner would have been made. That declaration was correct as at no point of time subsequently thereto, any step has been taken by the father of the petitioner to correct the same. In case that declaration would have been incorrect then the appropriate action would have been taken at that very time and that has not been done. Secondly, to dislodge the correctness of the entry of his date of birth in the school leaving certificate there should have been not only very strong but unimpeachable evidence. But here the evidence produced is the affidavit of his own father.

Such evidence could be easily prepared and then on the basis of the affidavit a certificate of his date of birth could have been got from the Nagarpalika, which is also a document got prepared by the petitioner in the year 1998. To a procured document, rightly no reliance or credit could have been given.

#. It is settled law that the employee seeking correction in his date of birth must show that the recorded date of birth was made due to negligence of some other person or that the same was an obvious clerical error. In case an employee fails to do so no relief can be granted. The reference here may have to the decision of the apex court in the case of Union of India Vs. Sarojwala reported in 1996(2) SCC 81. The correction of date of birth is claiming by the petitioner on the basis of extract from birth register. This document as stated earlier has been procured by the petitioner subsequent to his recording of the date of birth in the school leaving certificate. There is no material on the record other than this document and which based on the affidavit of the petitioner's father, to show that the birth date of the petitioner entered in the school leaving certificate is incorrect. The extract from the birth register in the facts of this case is evidence created by the petitioner for his own benefits and it cannot be relief upon. The reference here may have to another decision of the apex court in the case of Commissioner of Police Bombay Vs. V. Lahane 1997(1) SCC 247. The decision of the respondent No.2 to accept the date of birth of the petitioner as 1/6/1944 is perfectly legal and justified in which no interference of this court called for. The petitioner not only dragged the respondent No.1 in to litigation but to defend this petition it has to incur heavy expenses of Rs.4,500/-. This amount has been paid by the respondent No.1 to his learned counsel towards his fees for rendering his professional services. This amount would have been utilised by the respondent No.1 for the development of the area or to provide facilities and amenities to residents of the area. But for this litigation this amount would have been utilised and spent to provide facilities and amenities to the residents of the area or for some other development purpose. It is a case where the petitioner has made an attempt to get his date of birth correct on the basis of his own created documents.

#. Taking into consideration the totality of the facts of the case, I consider it to be a fit case where the petitioner has to be saddled with costs of this litigation and to pay the amount of Rs.4,500/- to the

respondent No.1.

In the result this special civil application fails and the same is dismissed with the costs to the respondent No.1, which is quantified to Rs.4,500/-. Rule discharged.

(S.K.Keshote, J.)

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